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COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH THE HON’BLE SRI JUSTICE M. SATYANARAYANA MURTHY CIVIL MISCELLANEOUS SECOND APPEAL No. 50 of 2006 DATE: 04.06.2015 Between: Smt. Batta Subbamma. … Appellant And Vijayabhaskar & others. … Respondents This Court made the following: THE HON’BLE SRI JUSTICE M. SATYANARAYANA MURTHY CIVIL MISCELLANEOUS SECOND APPEAL No. 50 of 2006 JUDGMENT: This civil miscellaneous second appeal is preferred challenging the judgment in A.S.No.59 of 2005 dated 07.07.2006 passed by the I Additional District Judge, Anantapur, reversing the findings of the Additional Senior Civil Judge, Anantapur in I.P.No.26 of 2002 dated 21.04.2005. The petitioners-creditors filed I.P.No.26 of 2002 under Section 9 of the Provincial Insolvency Act, 1920 (for short, “the Act”) to adjudge the 1st respondent therein as insolvent and to appoint official receiver to administer her assets alleging that the 1st respondent borrowed an amount of Rs.70,000/- from the 1st petitioner on 20.05.2000, Rs.85,000/- from the 2nd petitioner on 12.10.2000 and Rs.58,000/- from the 3rd petitioner on 16.02.2001 by executing promissory notes and agreed to repay the same together with interest @ 24%, 18% and 24% per annum, respectively. Despite demands made by the petitioners, the 1st respondent did not discharge the debt due. While the matter stood thus, the 1st respondent with a view to delay and defeat the claims of the petitioners executed a registered sale deed conveying ‘A’ schedule property for nominal price of Rs.85,000/- to the 2nd respondent therein on 11.03.2002, though, the market value of the property is more than Rs.1,50,000/- by then and she has no absolute necessity to alienate the property to the 2nd respondent. Apart from ‘A’ schedule property, the 1st respondent owned land worth Rs.30,000/- at Tagguparthy village. Thus, the 1st respondent alienated the substantial part of the property with an intention to defeat and delay the legitimate claims of the petitioners-creditors and it is an act of insolvency, whereby the sale deed executed by the 1st respondent in favour of the 2nd respondent is to be annulled and prayed to adjudge the 1st respondent as insolvent. The 1st respondent remained ex-parte. The 2nd respondent filed counter denying the material allegations of the petition inter alia contending that she is not aware about the debts pleaded in the petition while contending that the 1st respondent has no necessity to borrow any amount, as she is residing along with her son, and she is in affluent circumstances. She also denied alienation of ‘A’ schedule property with an intention to defeat and delay the claims of the petitioners-creditors. She specifically contended that she is a bona fide purchaser for valuable consideration and purchased the property as per the prevailing market value. Therefore, the transaction is genuine and such alienation does not amount to an act of insolvency and prayed for dismissal of the petition. During the course of enquiry, on behalf of the petitioners PWs.1 to 7 were examined and got marked Exs.A1 to A5 and on behalf of the respondents RW.1 – B.Subbamma was examined and got marked Exs.B1 to B9. Upon hearing the argument of both the counsel and considering the oral and documentary evidence, the trial Court dismissed the petition having concluded that the petition is a collusive one and that the 1st respondent possessed sufficient means to discharge the debt. Aggrieved by the said order, the unsuccessful petitioners preferred appeal before the appellate Court in A.S.No.59 of 2005, wherein the appellate Court set aside the order of the trial Court holding that the 1st respondent committed an act of insolvency and adjudged her as insolvent while ordering vesting of the schedule property to the official receiver. Challenging the order passed in the appeal, the present appeal is filed on various grounds and as seen from the grounds urged in the memorandum of grounds of appeal, most of them are based on factual aspect, but, however, this Court having considered the submissions made by the Advocate came to the conclusion that ground Nos.2, 3 and 4 relate to substantial questions of law. During the hearing, the learned counsel for the appellants contended that the reversal of finding by the appellate Court ignoring the evidence itself is sufficient to conclude that there is a substantial question of law and placed reliance on a judgment of the Apex Court in Abdul Raheem vs. Karnataka Electricity Board and others. The main endeavour of the counsel for the appellants is that the appellate Court totally ignoring the findings of the trial Court, without assigning any reasons, reversed the findings and such a reversal is sufficient to frame a substantial question of law and that too there is clinching evidence on record that the present petition is the outcome of collusion between the petitioners and the 1st respondent, but without assigning any reasons the appellate Court set aside the order and finally prayed to set aside the order passed by the appellate Court in A.S.No.59 of 2005 dated 07.07.2005, dismissing the petition, while confirming the order passed by the trial Court. Per contra, the counsel for the respondents would contend that the evidential admissions in the evidence of PW.1 with regard to the details of property and means to pay the consideration etc., are sufficient to conclude that the transaction covered by Ex.B3 is a collusive document executed by the 1st respondent in favour of the 2nd respondent with a view to delay and defeat the claims of the petitioners-creditors and prayed to dismiss the appeal. From a perusal of the order passed by the trial Court in I.P.No.26 of 2002, it is evident that the petition was dismissed on two grounds. The first ground is that the 1st respondent possessed sufficient means to discharge the debts and it is a ground to dismiss the petition under Section 25 of the Act. The second ground is that the petition is a collusive one between the petitioners and the 1st respondent. The appellate Court, after re-appraising entire evidence more particularly based on the evidence of the 2nd respondent, concluded that Ex.B3 was executed only to defeat and delay the claims of the petitioners-creditors. POINTS: The first question is whether possessing means by the 1st respondent to discharge the debt due to the petitioners-creditors is sufficient to dismiss the petition when the 1st respondent-debtor did not contest the petition. The second question is whether the finding of the appellate Court with regard to genuineness of Ex.B3 is based on any evidence, if not, the judgment of the appellate Court be sustained. POINT No.1: One of the grounds for dismissal of the petition by the appellate Court is possessing means by the 1st respondent to discharge the debt due to the petitioners-creditors. Section 25 of the Act, enables the Court to dismiss the petition in three circumstances: In the case of a petition presented by a creditor, where the Court is not satisfied with the proof of his right to present the petition; or Non-service of notice on the debtor about admitting the petition; and Where the Court is satisfied that the debtor is able to pay his debts, or that for any other sufficient cause. It is not the case of the 2nd respondent that no notice was served on the debtor about admitting the petition or the petitioners-creditors failed to prove their right to present the petition. But, the trial Court based on the evidential admissions on record, concluded that the 1st respondent-debtor possessed sufficient means to pay the debts due to the petitioners-creditors and dismissed the petition on this ground alone. The 1st respondent-debtor remained ex-parte. The alinee alone contested the matter by filing counter. There is a pleading that the 1st respondent-debtor owned and possessed some property and able to discharge the debt, but such a plea is not open to the 2nd respondent-alinee when the 1st respondent-debtor is not contesting. The similar question came up before this Court and this Court relying on a judgment reported in Vemulla Rosaiah and another vs. P. Subramanyam and another placing reliance on Harnam Singh vs. Gopal Das held that, the ground that the debtors is to pay the debts is not open to the debtor’s transferee, but only to the debtor. Likewise, in Gadi Bhikaji vs. Govindrao Bapuji the same issue had came up before the Nagpur Court and held that the petition cannot be dismissed when the debtor did not contest the matter, under Section 25 of the Act. In the first judgment of the our High Court, the 1st respondent-debtor remained ex-parte, the transferee-2nd respondent contested the matter and raised a ground that the debtor is able to discharge the debt due to the petitioners-creditors, but this Court declined to set aside the order holding that it is not open to the debtor’s transferee to raise such a plea. Therefore, on this ground the dismissal order of the trial Court is to be reversed. Under Section 25 of the Act, the Court can dismiss a petition for any other sufficient reasons. What is “sufficient reason” is not explained under Section 25 of the Act, but in Y. Malludore vs. P. Seetharathnam similar question came up for consideration and the Supreme Court ruled as follows: “In addition, the Court has been given a discretion to dismiss the petition if it is satisfied that there is other sufficient cause for not making the order against the debtor. The last clause of the section need not necessarily be read ejusdem generis with the previous ones, but even so there can be no sufficient cause if after an act of insolvency is established, the debtor is unable to pay his debts. The discretion to dismiss the petition can only be exercised under very different circumstances. What those cases would be, it is neither easy nor necessary to specify, but examples of sufficient cause are to be found when the petition is malicious and has been made for some collateral or inequitable purpose such as putting pressure upon the debtor or for extorting money from him, or where the petitioning creditor having refused tender of money, fraudulently and maliciously filed the application. An order is sometimes not made when by the receiving order the only asset of the debtor would be destroyed such as a life interest, which would cease on his bankruptcy. Cases have also occurred where a receiving order was not made because there were no assets and it would have been a waste of time and money to make a receiving order against the debtor. These examples merely illustrate the grounds on which orders are generally made in the exercise of the discretion conferred by the last clause of Section 25.” The trial Court did not

dismiss the petition for any other cause, but on the ground that the debtor is able to discharge the debt due to the petitioners-creditors, though the 1st respondent-debtor did not contest. When the debtor did not contest, the 2nd respondent-transferee of the debtor, is incompetent to raise such a plea and thereby the finding of the trial Court that the 1st respondent-debtor is able to discharge the debts due to the petitioners-creditors is hereby set aside. POINT No.2: One of the reasons for dismissal of the petition by the trial Court is that the petition is a collusive one between the petitioners-creditors and the 1st respondent and the trial Court assigned its own reasons. However, this finding was reversed by the appellate Court considering the evidence of RW.1. It is relevant to advert to the evidence of RW.1, who is the transferee of the debtor-1st respondent. As per her evidence, the 1st respondent used to stay and take food in her house, whenever she visited Parvathadevarapalli village and that she does not know the survey number and boundaries of the land and the land is vacant since 20 to 30 years. She further admitted that there was close relationship between the 1st respondent and herself, as per the Sub-Registrar, the market value of the property is about Rs.1 or Rs.2 lakhs per acre and that she testified that she does not know the name of the scribe of Ex.B3. If really the sale transaction between the 1st respondent and the 2nd respondent covered by Ex.B3 is genuine and true, RW.1 should have disclosed at least the survey number and other details like boundaries of the land, which she purchased, but failed to disclose any details of the property covered by Ex.B3, which creates any amount of doubt about the genuineness of the transaction covered by Ex.B3, but the trial Court, without appreciating the evidence in proper perspective, dismissed the petition. Ex.B3 was for Rs.85,000/- and the total extent sold is more than Ac.8.00. If the evidential admissions of RW.1 regarding value of each acre are accepted the total sale consideration would be more than Rs.8 lakhs. This itself is sufficient to conclude that the transaction covered by Ex.B3 is brought into existence with an intention to defeat and delay the claims of genuine creditors. On this count alone, the finding of the trial Court is liable to set aside holding the findings of the appellate Court. One of the major contentions of the 2nd appellant is that she is a bona fide purchaser and entitled to protection under Section 55 of the Act. Section 55 protects certain transactions and the following transactions shall not be invalidated in case of insolvency. "(a) any payment by the insolvent to any of his creditors; (b) any payment or delivery to the insolvent; (c) any transfer by the insolvent for valuable consideration; or (d) any contract or dealing by or with the insolvent for valuable consideration: Provided that any such transaction takes place before the date of the order of adjudication, and that such person with whom such transaction takes place has not at the time notice of the presentation of any insolvency petition by or against the debtor." The protection under Section 55 of the Act is not available to the 2nd respondent-appellant for the reason that the transaction did not take place subsequent to presentation of insolvency petition against the debtor and the debtor's transferee. Therefore, the 2nd respondent-appellant is not entitled to claim the benefit under Section 55 of the Act, since the transaction covered by Ex.B3 is anterior to the institution of insolvency proceedings, which give rise to a cause of action for filing the petition under Section 9 of the Act. Though the contention of the counsel for the appellants that upsetting the findings of the trial Court by the appellate Court without considering the evidence gives rise to substantial question of law even after discerning the entire material, I find no ground to set aside the order passed by the I Additional District Judge, Anantapur, in A.S.No.59 of 2005. In view of my foregoing discussion, the appeal is devoid of merits and the same is accordingly dismissed confirming the judgment of the appellate Court in A.S.No.59 of 2005. No order as to costs. ___________________________________ M. SATYANARAYANA MURTHY, J. Date: 04.06.2015 ES (2007) 14 SCC 138 AIR 1989 Andhra Pradesh 204 AIR 1929 Lahore 79 (Ref.) AIR 1937 Nagpur 127 AIR 1966 SC 918 PAGE PAGE 3 MSM, J C.M.S.A. No. 50 of 2006

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